



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0876]

RIN 1625-AA11

Regulated Navigation Area - Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard is proposing to establish a regulated navigation area (RNA) on the navigable waters of Weymouth Fore River under and surrounding the Fore River Bridge (Mile 3.5) between Weymouth and Quincy, MA until December 31, 2017. This proposed rule would allow the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the regulated area during the construction of the Fore River Bridge.

DATES: Comments and related material must be received by

the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0876 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Mark Cutter, Coast

Guard Sector Boston Waterways Management Division,  
telephone 617-223-4000, e-mail [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil); or  
Lieutenant Isaac M. Slavitt, Waterways Management Division,  
U.S. Coast Guard First District, (617) 223-8385. If you  
have questions on viewing or submitting material to the  
docket, call Renee V. Wright, Program Manager, Docket  
Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
RNA	Regulated navigation area

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by  
submitting comments and related materials. All comments  
received will be posted without change to  
<http://www.regulations.gov> and will include any personal  
information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket  
number for this rulemaking (USCG-2012-0876), indicate the  
specific section of this document to which each comment  
applies, and provide a reason for each suggestion or

recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0876) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number "USCG-2012-0876" in the "SEARCH" box and click "Search." Click and Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

## 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area.

#### C. Discussion of Proposed Rule

The Coast Guard's proposed rule would give the Captain of the Port Boston (COTP) the authority to establish speed and wake restrictions and to prohibit vessel traffic on this portion of the river for limited periods when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard would enforce a three knot speed limit as well as a "NO WAKE"

zone and be able to close the designated area to all vessel traffic during any circumstance, planned or unforeseen, that poses an imminent threat to waterway users or construction operations in the area. Complete waterway closures would be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures, mariners could request permission from the COTP to transit through the RNA.

The proposed rule was prompted by (but is not limited to) the navigation safety situation created by construction of the new Fore River Bridge (sometimes referred to as the Washington Street Bridge) and removal of the temporary bridge. This bridge carries State Road 3A over the Weymouth Fore River from Quincy to Weymouth MA. The present temporary Fore River Bridge was built in 2003 and was designed to be a 15 year temporary bridge until a new bridge could be built. The old Fore River Bridge that was built in 1936 was found to be deteriorated beyond the point of restoration in the 1990's. After the temporary bridge was built, the old Fore River Bridge was removed. The new Fore River Bridge will be located in the approximate location of the old Fore River Bridge. The present temporary bridge will reach the end of its useable life span in 2018 and the Massachusetts Department of

Transportation (Mass-DOT) has contracted J.F. White-Skanska Koch to construct a new vertical replacement bridge and remove the temporary Bridge. J.F. White-Skanska Koch has begun bridge construction and is scheduled to complete the new bridge and the removal of the old bridge in 2017.

The Coast Guard has discussed this project with MASS-DOT and J.F. White-Skanska Koch to determine whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway.

Specifically, this includes the placement of the lift span. The lift span is large and constructed of extremely heavy steel support beams that will be built on land, then floated by barge to the site and lifted and connected to the towers that support and operate it. The temporary bridge, suspended 55 feet above the water, must also be dismantled into small sections and lowered on to a barge below. These two processes will be complex and present many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and



barges positioned in the channel with a restricted ability to maneuver.

In an e-mail to the U.S. Coast Guard dated September 14, 2012, J.F. White-Skanska Koch outlined three phases of operations that require in-channel work, two of which will require waterway closures. J.F. White-Skanska Koch will notify the Coast Guard as far in advance as possible if additional closures are needed.

The first proposed closure period will be for three days during the winter of 2014-2015. The purpose of this closure is to float in the new bridge lift span system by barge and install the lift span system on to the two towers that support the lift span system. The barge will take up the width of the channel, causing a closure of the channel. Once the barge is in place and the installation of the lift span system begins the barge cannot move out of the channel until the lift span has been installed.

The second proposed closure period will be two separate periods for four to six days each starting fall of 2015 and extending to winter of 2016. The purpose of this closure is to remove the steel support beams of the two temporary existing bridge spans.

#### D. Regulatory Analyses

We developed this proposed rule after considering

numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: vessel traffic would only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during a closure may be authorized by the COTP Boston or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

#### 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

If you think that your business, organization, or

governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

## 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting



and recordkeeping requirements, Security measures,  
Waterways.

For the reasons discussed in the preamble, the Coast  
Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS

1. The authority citation for part 165 continues to  
read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701,  
3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1,  
6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064;  
Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0876 to read as follows:

§ 165.T01-0876 Regulated Navigation Area - Weymouth Fore  
River, Fore River Bridge Construction, Weymouth and Quincy,  
MA.

(a) Boundaries. The following is a regulated navigation  
area; all navigable waters surrounding the Weymouth Fore  
River (Mile 3.5), between Weymouth and Quincy, MA; from  
surface to bottom, within the following points (NAD 83):  
from a line extending from 42°14'46.392" N, 070°58'2.964"  
W, thence along a line 120°T to 42°14'44.376" N,  
070°57'52.992" W, thence south along the shoreline to  
42°14'35.052" N, 070°57'59.364" W, thence along a line

291°T to 42°14'38.58" N, 070°58'15.348" W, thence north along the shoreline to the first point.

(b) Effective Dates and Enforcement Periods. This rule is effective and enforceable from July 1, 2013 through December 31, 2017. Periods of enforcement will normally be publicized in advance via Local Notice to Mariners or Broadcast Notice to Mariners.

(c) Regulations.

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Boston (COTP) or the COTP's designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a "Slow-No Wake" speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than three knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it creates a danger of injury to persons, or damage to vessels or structures of any kind.

(4) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative.

(5) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(6) Vessel operators desiring to enter or operate within the regulated area when it is closed shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-3201 (Sector Boston command Center) to obtain permission.

(7) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84 - Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

Dated: February 5, 2013.

D. B. Abel  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

[FR Doc. 2013-04030 Filed 02/21/2013 at 8:45 am; Publication Date: 02/22/2013]